



28 March 2014

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By email to: [steve.webber@ags.gov.au](mailto:steve.webber@ags.gov.au)

Dear Mr. Webber,

**RE: ROYAL COMMISSION OF INQUIRY INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE**

I refer to the matter above and to your letter to Swimming New South Wales (SNSW) dated 20 March 2014.

As requested by the Royal Commission of Inquiry into Institutional Responses to Child Sexual Abuse (**Royal Commission**), this letter responds to the matters listed in Annexure A of your recent correspondence.

Dealing with each of the matters set out in Annexure A we make comment as follows:

a) ***Adoption and implementation of Swimming Australia policies***

Most sporting organisations in Australia are structured as federations; i.e. there is a national organisation, with state and territory organisations as members. Swimming is no different in this regard. Swimming Australia Limited (**SAL**) is the national sporting organisation responsible for the sport of swimming in Australia. SNSW is a "Member Association" under the SAL Constitution (a copy of the current SAL Constitution can be found here:

[http://www.swimming.org.au/visageimages/1\\_SAL/Constitutions/SAL\\_Constitution\\_amended\\_for\\_AGM\\_18092013\\_2.pdf](http://www.swimming.org.au/visageimages/1_SAL/Constitutions/SAL_Constitution_amended_for_AGM_18092013_2.pdf)).

Accordingly, SNSW is the state sporting association responsible for the sport of swimming in New South Wales (just as there is other state and territory sporting associations that are members of SAL and are responsible for the sport of swimming in their state or territory, i.e. Swimming Victoria, Swimming Queensland etc.). SNSW in turn has members that are clubs and individuals (see further clause 5.1 of the SNSW Constitution. A copy of the current SNSW Constitution can be found here: [http://nsw.swimming.org.au/visageimages/About\\_Us/Governing\\_Documents/SNSW\\_Constitution\\_-\\_July\\_2013.pdf](http://nsw.swimming.org.au/visageimages/About_Us/Governing_Documents/SNSW_Constitution_-_July_2013.pdf)).

Furthermore, as Swimming NSW is a Member Association of SAL;

- (a) a club affiliated with SNSW is deemed a "Club" under the SAL Constitution, and
- (b) a registered financial member of SNSW is deemed an "Individual Member" under the SAL Constitution.

### ***Membership of SAL***

Under rule 14.1 of the current SAL Constitution, SNSW, the clubs affiliated with SNSW and the registered financial members of SNSW are all Members of SAL.

### ***Effect of Membership***

Under rule 17.1 of the current SAL Constitution, the Members of SAL acknowledge and agree (so far as is relevant) that:

- (a) the SAL Constitution constitutes a contract between each of them and SAL and that they are bound by the Constitution and the by-laws, and
- (b) they shall comply with and observe the Constitution and the by-laws and any determination, resolution or policy which may be made or passed by the board of SAL or any duly authorised committee

### ***Member & Child Welfare Policies***

Since the SAL Member and Child Welfare Policies are policies made by the board of SAL under the SAL Constitution, the Members of SAL (including SNSW, its clubs and registered financial members) are bound by the Policies by reason of rule 17 of the current SAL Constitution. Copies of these Policies have been attached to this Statement (see **Attachment A**).

Both Policies were adopted by the board of SAL in October 2002. They have both been amended on several occasions subsequently. The last amendments were made in January 2014. As you may no doubt be aware, the Member Protection Policy has stringent requirements in relation to Working with Children Checks.

Through its membership of SAL, Swimming NSW is bound by the Policies from their adoption date, which includes any subsequent amendments to the Policies. To ensure due diligence the usual practice in my time as Chief Executive Officer of SNSW (since October 2009) has been that when Policy amendments are made by SAL, a copy of these amendments are provided to the SNSW Board for review and a formal motion of adoption is made. This deliberate action of formally adopting the Policies is to avoid any doubt that the relevant Policy will then apply to all Swimming NSW Members (by operation of clause 31 of the SNSW Constitution). It also ensures that the SNSW Board and management are fully aware of any amendments to the Policies and allows the SNSW Board to make any necessary organisational changes that may be required to ensure compliance with the Policies.

When a Policy is adopted by the Swimming NSW Board, notification is provided to all Member Associations (Areas and Clubs) by way of electronic newsletter, which is sent out each month within a few days of the monthly Board meeting. All Policies are also posted on the SNSW website. With respect to the SAL Member and Child Welfare Policies, as these Policies are of great importance and also apply to Individual members of SNSW, we ask that each member when joining their respective Club expressly indicates their acceptance to be bound by these Policies.

### ***Member & Child Welfare Procedures***

In addition to the SAL Member & Child Welfare Policies, a set of procedural documents have also been adopted by SAL and in turn, SNSW (in accordance with the procedure set out above) which assist Members, Clubs, Areas and State Swimming Associations with the implementation of the SAL Member and Child Welfare Policies. Copies of these Procedures have been attached to this letter (see **Attachment B**). These procedures outline that members who want to make a complaint or express concerns about possible incidents of child sexual abuse should be referred to, or be made directly to, the CEO of Swimming NSW or SAL.

b) REDACTED

### ***Service Excellence Award***

As noted in Swimming NSW's correspondence on the 25 July 2013 to Roderick Best, General Counsel to the Royal Commission, SNSW first became aware of Mr. REDACTED offending behaviour when it was provided a newspaper article about his trial by a member. Mr. REDACTED was subsequently convicted for child sex and pornography offences. For the avoidance of doubt, Swimming NSW received no complaints of child sexual abuse in regards to Mr. REDACTED whilst he was acting as a member of SNSW.

According to the Minutes of the SNSW Board of Directors, the SNSW Board met on the 25<sup>th</sup> June 2008 and was briefed in regards to Mr. REDACTED. An extract of the relevant Minutes of this meeting when Mr. REDACTED was discussed have been enclosed with this letter (see **Attachment C**). These Minutes indicate that the SNSW Board determined that they would hold the awarding of Mr. REDACTED Service Excellence Award (which was due to be awarded to him) in abeyance pending the completion of any criminal proceedings against him. The then CEO of Swimming NSW, Mr. Ian Harkness was instructed to write to Mr. REDACTED advising him of this. A copy of Mr. Harkness' correspondence is not on file, however in his correspondence to Mr. Colin Thompson, the then President of Port Macquarie Swimming Club, dated the 27<sup>th</sup> of June (two days after the Board meeting), Mr. Harkness indicates that he had written to Mr. REDACTED. In those circumstances it is reasonable to believe (as we do believe) that Mr. Harkness wrote to Mr. REDACTED in the days following the 25<sup>th</sup> of June SNSW Board meeting. A copy of Mr. Harkness' correspondence to Colin Thompson has been enclosed with this letter (see **Attachment D**).

We understand that no response was received from Mr. [REDACTED] with regard to his Service Excellence Award. The basis for this understanding is that we have not been able to locate any response on file, nor in our recent discussions with former CEO Ian Harkness to assist in preparing this letter does he ever recall receiving a response. The SNSW Service Excellence Awards are awarded on a yearly basis with Mr. [REDACTED] being nominated in 2008 (as we understand due to his 40 year involvement with swimming officiating) and this nomination was endorsed by the SNSW Board with Mr. [REDACTED] due to receive his award at the SNSW Annual General Meeting in 2008. As previously noted, when court proceedings against Mr. [REDACTED] became known to the SNSW Board, they advised Mr. [REDACTED] that he would not receive his award. In 2009 and the years following, Mr. [REDACTED] was not re-nominated for this award and therefore has not been eligible for the award again. Hypothetically speaking, if Mr. [REDACTED] was re-nominated for the award, the relevant SNSW Board at the time would be required to make a determination at that time as to whether or not he was worthy recipient for this award.

### **Membership**

Swimming operates like most other federated sports structures, in that individuals must make an application to their respective Club for membership each year. If that Club accepts this membership then they automatically become a member of SNSW and SAL.

The exact date when Mr. [REDACTED] joined as a member is unknown, but our records indicate that this was some time in 1966 after the Port Macquarie Swimming Club (PMSC) was first formed. During his time as a member of PMSC and SNSW the membership categories have changed slightly but for all intents and purposes Mr. [REDACTED] was a non-swimming member. This means that he did not compete in the sport of swimming rather acted as Volunteer and Technical Official and served for periods of time on the PMSC Management Committee.

SNSW and our affiliated Areas and Clubs currently operate on a membership year which runs from the 1<sup>st</sup> of October to 30<sup>th</sup> of September each year. This was the case in 2008. During the 1977/78 year, Mr. [REDACTED] was awarded Life Membership of PMSC in recognition of his contributions to that Club. This Life Membership of PMSC entitled Mr. [REDACTED] to free membership to PMSC, SNSW and SAL and is intended to last until the member passes away; the membership is suspended or discontinued (i.e. for disciplinary reasons or otherwise) or the member advises the Club that they no longer wish to become a member.

In 2008, the sport of Swimming had recently moved to an online registration system, which allowed members to go onto the SNSW website and complete their Club registrations online and pay with a credit card. As the system required a payment for each membership, Life Memberships were not processed through this system (there being no fee relevant to life membership). Rather each Club needed to write to SNSW advising of their current Life Members, so that SNSW could manually add their names to the Membership system.

As Mr. [REDACTED] was a Life Member of PMSC, for his membership to be renewed PMSC were required to advise SNSW that Mr. [REDACTED] was a Life Member of their Club. SNSW was informed by PMSC that when Mr. [REDACTED] was convicted for child sex and pornography offences that they rescinded his Life Membership of PMSC. At the time of writing this letter, the exact date that this motion was passed by the Committee members of PMSC is unknown, but we can confirm that Mr. [REDACTED] membership was not renewed from the 1<sup>st</sup> of October 2008 by PMSC. He was therefore no longer a member of SNSW and SAL.

As Mr. REDACTE Life Membership was removed from him by the PMSC, this means he can no longer access the benefits of membership that are available to the members of PMSC, SNSW and SAL. If Mr. REDACTE wanted to join a swimming Club in the future he would need to make an application for membership directly to a relevant Club. Usually, the Board of that relevant Club would need to decide whether to accept the membership application. In doing so, the Board would need to have regard to whether the applicant satisfies any membership criteria and would need to receive payment of the relevant membership fee. However, it is noted that each Club is responsible for this process and ultimately any such decision is subjective and relevant to the Board of the relevant Club and is entirely dependent on the circumstances of the application at the time that it is made. As previously noted, if Mr. REDACTE made an application for membership to a Club he would need to declare his acceptance to be bound by the Policies of the Club, SNSW and SAL (which includes the Member and Child Welfare Policies and the relevant Working with Children Check legislation).

We trust that this statement thoroughly addresses the matters set out in Annexure A to your letter. Should you require any further information in relation to the matters contained in this letter, please do not hesitate to contact me.

Sincerely,



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**Mark Heathcote | Chief Executive Officer | Swimming NSW Ltd.**

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